

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

POLICIES AND PROCEDURES

Subject:
**USES AND DISCLOSURES OF PHI
REGARDING VICTIMS OF ABUSE,
NEGLECT, OR MISTREATMENT**

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Entity responsible:
Office of
Legal Counsel

1. **Purpose:**

This policy provides instruction and guidance on the uses and disclosures of protected health information (PHI) about victims of abuse, neglect, or mistreatment, under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and pursuant to the Tennessee Code Annotated and relevant departmental policy.

2. **Policy:**

- 2.1 All employees of the Department of Mental Health and Developmental Disabilities (DMHDD) and the Regional Mental Health Institutes (RMHIs) must report suspected cases of abuse, neglect or mistreatment involving a service recipient, or any person whom the DMHDD/RMHI employee reasonably believes is the victim of abuse, neglect or mistreatment, to a law enforcement official or to an agency authorized by law to receive such information. In many instances of suspected abuse, neglect or mistreatment, a service recipient's personal health information (PHI) must be disclosed to assist in the investigation of the abuse, neglect or mistreatment.
- 2.2 In the case of a known accusation of physical or sexual abuse of a child, the child's PHI shall not be accessible to the accused unless: (1) a court orders the disclosure; or (2) the child's qualified mental health professional, after consulting with the child, the child's guardian *ad litem*, and others on the child's behalf, has determined the disclosure appropriate, and the accused is the child's parent, legal guardian, legal custodian, or legal caretaker of the child. If the court permits access to the child's record, the court has jurisdiction to issue orders limiting access to and use of the information by the person seeking access, including the granting of injunctive relief. In this instance, state law provides greater privacy protection than HIPAA, and thus preempts HIPAA.

- 2.3 Tennessee courts will not recognize out-of-state court orders, unless the order has been domesticated in a Tennessee court, pursuant to the Uniform Enforcement of Foreign Judgments Act, Tenn. Code Ann. §§ 26-6-101, *et seq.*, by the party seeking to enforce the court order. Tennessee courts do recognize the orders of federal courts.
- 2.4 Where a child thirteen (13) years of age or younger is diagnosed with or treated for a sexually transmitted disease or condition, the DMHDD/RMHI must report the case in writing immediately to the Tennessee Department of Health, on a special form supplied by that department.
- 2.5 The identity of a person reporting abuse, neglect or mistreatment is confidential and may not be disclosed without the consent of the person reporting it or by a court order, except to investigators, or to the district attorney to carry out the laws of reporting abuse, neglect or mistreatment.

3. Procedure/Responsibility:

- 3.1 In instances concerning allegations of abuse, neglect or mistreatment, any DMHDD/RMHI employee who receives a request for the use or disclosure of PHI from a law enforcement official, the Department of Children's Services, the Department of Human Services, the TBI, the FBI, sheriff or other public official authorized to receive such information, must immediately, or as soon as practicable, refer the request to the DMHDD or RMHI Privacy Officer/designee and to the DMHDD Office of Legal Counsel or RMHI attorney.
- 3.2 If the DMHDD/RMHI Privacy Officer/designee or attorney determines that the use or disclosure is appropriate, the information must be released to the appropriate party within ten (10) working days from the date the request was received. However, if the use or disclosure of the information is not appropriate, the party who requested the information must be notified of the determination within ten (10) working days from the date that the request was received.
- 3.3 Tenn. Code Ann. §§ 37-1-401, *et seq.*, mandate that child abuse, neglect or mistreatment be reported to the county office of the Department of Children's Services, to the judge having juvenile jurisdiction over the child, or to the sheriff or chief law enforcement official where the child resides. If there is a question as to which agency should receive the report, the Department of Children's Services is the agency best equipped in handling such reports. Instances of abuse, neglect or mistreatment of adults must be reported to the Department of Human Services - Adult Protective Services, which is responsible for the investigation and necessary follow-up, or to Tennessee Protection and Advocacy, Inc.

- 3.4 Reporting of abuse, neglect, or mistreatment to appropriate state agencies does not relieve the DMHDD/RMHI of its duty to investigate instances of allegations abuse, neglect, or mistreatment that may have occurred in an RMHI. Such investigations may be coordinated with other state agencies to avoid duplication of efforts.
- 3.5 HIPAA provides that state law controls with respect to the uses and disclosures of PHI relative to investigations of such matters; therefore, the DMHDD must follow applicable state laws regarding disclosures of PHI in cases of abuse, neglect or mistreatment.
- 3.6 All RMHI professional staff with reasonable cause to suspect that a service recipient has been the victim of abuse, neglect or mistreatment, must report the suspected abuse, neglect or mistreatment. HIPAA Regulation 45 C.F.R. § 164.512(a)(2) and (b)(1)(iii), permit a Covered Entity, such as the DMHDD, to exercise its professional judgment in determining if the disclosure is necessary to prevent serious harm to the individual or to others. However, Tenn. Code Ann. § 71-6-103(b) requires reporting the abuse, neglect or mistreatment if such person has reasonable cause to believe that abuse, neglect or mistreatment has occurred.
- 3.7 Failure to report suspected child abuse, neglect or mistreatment may give rise to civil liability, but persons reporting suspected child abuse, neglect or mistreatment are presumed to be acting in good faith, and are immune from liability.
- 3.8 In instances where uses or disclosures of PHI are made without a valid authorization, the DMHDD/RMHI Privacy Officer/designee must document such uses or disclosures, and maintain an electronic or written log of the uses or disclosures for six (6) years from the date the request for the disclosure or accounting was received.

4. Definitions:

Adult: A person eighteen (18) years of age or older.

Child: A person who is under eighteen (18) years of age or who is reasonably presumed to be under eighteen years of age.

5. Other Considerations:

Authority:

Health Information Portability and Accountability Act of 1996, Public Laws 104-191; HIPAA Regulation 45 C.F.R. § 164.512; Tenn. Code Ann. §§ 33-1-303, 33-3-108, 33-3-

111; Tenn. Code Ann. §§ 37-1-102, 37-1-401, *et seq.*, 37-1-605; Tenn. Code Ann. §§ 71-6-103 (b), 71-6-105.

Approved:

Virginia L. Belts
Commissioner

7/4/06
Date